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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1959

No. [redacted]137

CHARLOTTE ANDREWS,
Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, *et al.*,
Defendants and Appellees.

CHARLOTTE ANDREWS,
Plaintiff and Appellant,

vs.

THE CITY OF SAN BERNARDINO, *et al.*,
Defendants and Appellees.

Appeal to the Supreme Court of the United States
From the California State Appellate Courts.

APPELLANT'S REPLY TO APPELLEES' MOTION TO DISMISS OR AFFIRM

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I

APPELLANT HAS COMPLIED WITH THE RULES OF COURT

The first eleven pages of the Notice of Appeal set forth the statements of the questions in a short and concise manner, without repetition. The questions presented are expressed in the terms and circumstances of the case and without unnecessary detail, and the Justices need only read pages 1 through 11 of the 42 pages of Notice of Appeal.

The printers, included after page eleven, material that was being prepared for the subsequent jurisdictional statement, inadvertently, inasmuch as Counsel at the time was in Mexico, and said additional inclusion as printed was mailed to the Clerk of the Su-

preme Court, instead of State Court, by said printers, without the opportunity to submit the same to Counsel. As the jurisdictional time to notice the appeal was to lapse on the same day (See attached letter from Clerk of Supreme Court, Exhibit "A" herein), it became necessary to file the same immediately, i.e. on the 90th and last day, April 12, 1960, as already printed, without opportunity of deleting the material which had already been inserted after page 11 of the Notice of Appeal.

EXHIBIT "A"

Office of the Clerk,
Supreme Court of the United States,
Washington 25, D. C.

April 18, 1960

Manuel Ruiz, Jr., Esquire
704 South Spring Street
Los Angeles 14, California

RE: ANDREWS v. CITY OF SAN BERNARDINO ET AL.

Dear Sir:

This will acknowledge receipt of your letter of April 11th, requesting that certain enumerated changes be made in your "Notice of Appeal to the Supreme Court of the United States."

Since the Notice of Appeal has previously been returned to you, the copies of your letter of April 11th are returned herewith.

Very truly yours,
JAMES R. BROWNING, Clerk
By: R. J. Blanchard, Deputy

RJB:jmh
Enclosures

Under said circumstances of inadvertence, in the interests of justice, appellant ought not be denied a hearing on the merits.

A reading of the first eleven pages of the Notice of Appeal will show why appellees have not claimed that they were in any manner prejudiced or misled. The Court will agree, that the statements of the questions as therein submitted are short and concise, and are not repetitious and without unnecessary detail. Said first eleven pages comply with all of the procedural requirements of the Notice of Appeal, without need of referring to the pages thereafter included, which latterly included material now forms part of the Jurisdictional Statement, on file.

Appellant denies appellees' assertion, that additional questions which change the substance of the six original grounds for appeal, have been inserted in the Jurisdictional Statement, and to the contrary calls attention of the Court that the six inter-related steps asserted in the Notice of Appeal as violating appellant's constitutional rights, are the same six grounds for appeal which are contained and explicitly set forth in the Jurisdictional Statement, re-arranged only as to number and reworded in the form of questions for more clarity.

II

REPLY TO STATEMENT OF FACTS

The statement of facts set forth by appellees in Paragraph II of the Motion to Dismiss, are matters which go to the merits of the appeal, and properly to be determined, upon the issues which are raised and substantiated by the Jurisdictional Statement.

Appellees' attempt to beg the question by asserting that the matter is still "at issue before the San Bernardino County Superior Court," is untrue, as specifically contradicted by appellant at pages 8 to 10, inclusive, of the Jurisdictional Statement, wherein it is set forth that the State Court decisions have made the trial and review of appellant one of form only, and without substance, inasmuch as the issues have been finally adjudicated. Even so, appellees do not directly contradict the contentions of appellant other than to merely state that a portion of the record should not be considered by this Court.

Appellees' contention that matters of a "free election" are matters solely of State concern and State law, is contrary to the legal authorities submitted by appellant wherein the United States Constitution has been invoked in protection of the State privilege of voting.

III

FEDERAL QUESTIONS WERE PROPERLY RAISED

Pages 10 and 11 of the Notice of Appeal, and pages 10 and 11 of the Jurisdictional Statement, detail the manner in which the Federal questions were properly raised below. The assertion by appellees that the State courts failed to consider or pass upon the Federal questions, should offer little solace, since all that State courts would have to do would be to fail to consider or pass upon matters raised of Federal import, and ignore the same, and no right to appeal to the Supreme Court would exist.

IV

SUBSTANTIAL FEDERAL QUESTIONS WERE PRESENTED

In arguing the merits of the issues, appellees in substance relate that a strict compliance with the California State Law is a complete defense to the action presented. Appellees likewise contend that token adherance to a State statute is all that is required, without reference to whether the same be unconstitutionally enforced. Under color of valid State law, appellees adopt the philosophy that State instrumentalities may avoid good faith hearings, analysis and study in adjudicatory proceedings, ignore principles of good faith in free elections, and circumvent the guarantees of the Federal Constitution, which require a hearing and free election in fact, and not merely in form.

V

JUDGMENT OF STATE COURTS RESTS ON ADEQUATE FEDERAL BASIS

Appellees devote two pages of argument without making reference to any of the authorities cited by appellant at pages 12 to 40 of the Jurisdictional Statement, in support of the claim that the judgments of the State courts rest on adequate non-federal basis. The arguments made by appellees in this regard are without merit.

The quotation on page 23 of Appellees' Motion to Dismiss or Affirm, from the opinion of the District Court of Appeals, as follows:

> "We are satisfied that her Petition makes fully clear that ample time and opportunity for hear-

ing was afforded petitioner by the Council and that on this showing no Court would be justified in holding that the Council abused its Discretion."

The quotation is illustrative of the congenital defect of the proceedings disputed at bar. It must be considered at all times that the determinations of the Court below were a result of appellees' demurrer, which admits the truth of allegations well pleaded.

In District Court of Appeals, 4th Civ. No. 92497, Clerk's Trans., page 13, it is alleged in appellant's pleading that after the first continuance was granted by the Common Council, appellant's expert searched for and sought to marshal facts required by law, such as surveys, investigations, reports of public agencies, and which were either non-existent or not available during said three weeks continuance, and that it became necessary for said expert to conduct original research and three weeks were insufficient in view of the magnitude of the task, despite the fact that appellant submitted a preliminary report on the merits, by a qualified expert which showed work performed and the necessity of further research for proper preparation. (4th Civ. numbered 92497, Cl. Trans., pages 18 through 20) wherein reference is made to exhibits 9 and 10 commencing on sub-page 34 through 44. Nevertheless, on March 24th. 1958, appellee Common Council arbitrarily denied a further continuance and proceeded to adopt the plan.

Under Code (California Health & Safety Code, Section 33570), it was provided, with regard to the tentative plan, that all records and certified copies in relation thereto shall be given a name and number and filed with the City Clerk (4th Civ. numbered

94346, Cl. Trans., pg. 23). On the date of the approval of the Tentative Plan, no exhibits were filed with the City Clerk (4th numbered 94346, Cl. Trans., pg. 30). The City Clerk could not produce said documents relating thereto, because he had not received the exhibits. (4th Civ. numbered 94346, Cl. Trans., pg. 31).

The plain import of lack of due process became evident at the hearing upon the final plan July 1st, 1858, wherein it is alleged in District Court of Appeal numbered 4th Civ. 94346 (Appellant's Petition for Judicial Review), Cl. Trans., pages 16 and 17, that the findings of the Common Council were based upon the following:

1. General information of the Common Council heard over a period of many months.

2. Personal knowledge of Councilmen as long-time residents of San Bernardino.

3. Confidential information not filed with the City Clerk (4th Civ. numbered 94346, Cl. Trans., page 19).

4. That the completed record submitted by appellees weighed 54 lbs. (4th Civ. numbered 94346, Cl. Trans., pg. 21)

5. Opponents of the plan only had one-half hour to examine the work of the Redevelopment Agency (4th Civ. numbered 94346, Cl. Trans., pg. 29), when they were called upon to present their opposition.

Appellees' reference to the decision of the District Court of Appeal (No. 94346), that there was no abuse of discretion in refusing appellant a further continuance, as well as restricting her to only one-half hour to examine a 54 lbs. of printed and written reports, patently savors of the uneven justice of which Appellant complains.

Equally without merit is appellees' contention that by merely inserting the word "advisory" in the recesses of the Council Chambers, in the preamble of the initiatory ordinance, without the disclosure thereof on the ballot to the electors, enabled the State Municipal Corporation to nullify the votes cast. (See Appellant's Jurisdictional Statement, pages 12 to 17 inclusive.)

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